

JESSE L. MILLER

IBLA 81-74

Decided April 22, 1981

Appeal from the decision of the Nevada State Office, Bureau of Land Management, returning notices of location and service fees for four mining claims.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

2. Accounts: Payments--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

It is proper for the Bureau of Land Management to refuse to accept a check postdated 30 days after receipt as satisfactory payment of service fees for recordation of mining claims.

APPEARANCES: Jesse L. Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jesse L. Miller has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated September 10, 1980, returning his notices of location and service fees submitted for recordation of the Telstar Nos. 1 through 4 mining claims pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant located his mining claims on April 24, 1980, and submitted copies of his location notices and a \$ 20 check to cover service fees to BLM on May 28, 1980, within the 90 days required by FLPMA. The check was dated June 27, 1980. BLM returned the notices and check to appellant stating that it was unable to accept a postdated check and requesting that appellant submit a new check.

On September 5, 1980, appellant resubmitted his filings. A note accompanying this submission indicates that BLM's notice returning his check may have been lost in the mail. BLM then issued a letter decision dated September 10, 1980, returning the location notices and service fees because they were not filed within the 90 days allowed by FLPMA and Departmental regulations at 43 CFR 3833.1-2(b).

In his statement of reasons to the Board, 1/ appellant admits that there may have been a wrong date on his first check. He indicates that he can not afford to refile with the county, and that he has been sick.

[1, 2] Under section 314 of FLPMA, supra, owners of mining claims located after October 21, 1976, are required to record copies of notices or certificates of location for the claims with BLM within 90 days after the date of location. In addition, 43 CFR 3833.1-2(d) states that a location notice must be accompanied by a service fee. This is a mandatory requirement and the Board has consistently held that there is no recordation unless the notice is accompanied by the required fee, or until it is paid. Frank Franich, 47 IBLA 332 (1980); David Mendenhall, 47 IBLA 298 (1980); Cecil V. Clifford, Jr., 47 IBLA 262 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Where, for a claim located after October 21, 1976, the service fee is not paid within 90 days after the

1/ On Sept. 22, 1980, appellant submitted to the Board a letter enclosing his location notices, filing fees, and copies of BLM's Sept. 10 and June 2, 1980, decisions (see text). The Board considered this letter to be a notice of appeal of the Sept. 10 decision and transmitted it to BLM for proper processing. Upon receipt the Nevada State Office reviewed the submission as if it were a new recordation filing and issued another decision rejecting the filings as untimely. We will consider appellant's case with respect to all decisions.

date of location, there is no timely recordation and the claim must be declared abandoned and void. David Mendenhall, supra.

Appellant's check was postdated June 27, 1980 (it was actually written as 6 27, 1980), 30 days after its receipt by BLM. In order to insure that collection of the check would not be affected by the postdating, BLM would have had to hold the check until just prior to June 27, before depositing it for collection. BLM state offices have had to process thousands of mining claim recordations. To require that BLM provide specialized treatment to deal with the peculiarities of an individual claimant's method or form of payment would unduly complicate the orderly administration of fee collection. See Benjamin T. Franklin, 38 IBLA 291, 293 (1978). The immediate uncollectability of the check was appellant's fault and he could have avoided this problem by careful dating of the check initially. The postdated check was returned by BLM in more than enough time for appellant to resubmit his filings. His September filings were too late to meet the requirements of the law, and this Board has no authority to excuse lack of compliance. Glen J. McCrorey, 46 IBLA 355 (1980).

We wish to distinguish this case from one where a check is postdated only a few days after receipt. In such circumstances BLM should send the check for collection since in the normal course of collection the check would probably reach the bank for payment on an acceptable date. See Lillie Belle Higgins, 38 IBLA 254 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

